

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland
(240) 777-6600

CASE NO. S-2552

PETITION OF RDD SS PARTNERS, L.C.

RESOLUTION TO TRANSFER SPECIAL EXCEPTION

(Resolution Adopted July 9, 2003)

(Effective Date of Resolution: July 14, 2003)

On June 24, 2003, the Board of Appeals received correspondence from RDD SS Partners, L.C. ("RDD SS") requesting a transfer of Special Exception No. S-2552 from Marriott International, Inc. to RDD SS. The correspondence requested that the transfer be conditioned upon acquisition of the Property by RDD SS and that the transfer not take effect unless and until said acquisition occurs.

The correspondence by RDD SS further provided that RDD SS "will own the Property, develop the lot and build the hotel. Marriott will operate and manage the hotel ... The development of the Property will continue to be controlled by the Special Exception and Site Plan approvals."

The subject property is situated on Parcel GGGG, WesTech Business Park (the "Property") in the I-3 Zone.

The Board of Appeals considered the request of RDD SS at its Worksession on July 9, 2003. Rule 12.2 of the Board of Appeals Rules of Procedure [Resolution No. 12-865, October 27, 1992] provides that the transfer of a special exception is a modification under Section 59-G-1.3 of the Zoning Ordinance. Section 59-G-1.3(c)(1) of Ordinance provides:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the transfer of the special exception from one holder to another, to be operated in accordance with its existing terms and conditions, will not intensify the use or substantially change its impact on the immediate neighborhood or on traffic. Therefore,

On a motion by Donna L. Barron, seconded by Angelo M. Caputo, with Louise L. Mayer, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-2552 is re-opened to receive correspondence of RDD SS date-stamped June 24, 2003, with attachments; and

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that Case No. S-2552 is transferred to RDD SS conditioned upon acquisition of the Property by RDD SS;

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exceptions, together with any modifications granted by the Board of Appeals, remain in effect.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 14th day of July, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-2552

PETITION OF MARRIOTT INTERNATIONAL

OPINION OF THE BOARD

(Date of Decision: March 19, 2003)

(Effective Date of Opinion: April 8, 2003)

Case No. S-2552 is an application, filed on September 30, 2002, for a special exception pursuant to Section 59-G-2.33 (Hotels and motels) of the Zoning Ordinance to permit the development of a 130-unit extended stay hotel. The proposed hotel will include 134 parking spaces. The Petitioner proposes to employ up to 15 individuals per shift, with a maximum of 21 employees on the site at any one time.

The subject property is Parcel GGGG, Westfarm Technology Park Subdivision, located at 12000 Plum Orchard Drive, Silver Spring, Maryland, in the I-3 Zone and the US 29/Cherry Hill Road Employment Area Overlay Zone.

Pursuant to the provisions of Section 59-A-4.125 of the Montgomery County Zoning Ordinance, the Board of Appeals referred the case to the Hearing Examiner for Montgomery County to conduct a public hearing and render a written Report and Recommendation.

The Hearing Examiner convened a public hearing on January 13, 2003. The record in the case was closed on January 31, 2003, and on February 28, 2003 the Hearing Examiner issued a Report and Recommendation finding that the special exception application satisfies all of the general and specific standards for the use and recommending approval of the application.

Decision of the Board: Special exception **granted** subject to
Conditions enumerated below.

At its Worksession on March 19, 2003, the Board of Appeals considered the Report and Recommendation of the Hearing Examiner together with a letter from William Kominers, Esquire, dated March 5, 2003. The Board finds that the

record in the case should be reopened to receive the letter from Mr. Kominers clarifying the scheduled hours of the daytime shift of employees. The Board voted to adopt the findings and conclusions of the Report and Recommendation, as modified by the clarification that the correct operating hour for the commencement of the "day shift" at the hotel will be 7:00 a.m., rather than 8:00 a.m., as indicated on page 10 of the Hearing Examiner's Report and Recommendation. The Board voted to **grant** the special exception subject to the following conditions:

1. Petitioner shall be bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorneys, to the extent that such evidence and representations are identified in the Hearing Examiner's Report and Recommendation and in the opinion of the Board.
2. The Petitioner shall comply with all requirements of a final Forest Conservation Plan (FCP) no later than Planning Board approval of Site Plan No. 8-03006. The final FCP must be consistent with requirements of the stormwater management concept approved by the Department of Permitting Services.
3. The Petitioner shall determine the proposed mix of unit types at or before site plan approval and the approved site plan shall be forwarded to the Board of Appeals. The mix of unit types shall be within the ranges proposed by the Petitioner at the January 13, 2003 hearing. The final unit allocation, as determined at the site plan, will be binding upon the Petitioner.

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

of the Board of Appeals for
Montgomery County, Maryland
this 8th day of April, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.